

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

NATIONAL ASSOCIATION OF HOME
BUILDERS OF THE UNITED STATES,
et al.,

Plaintiffs,

v.

R. ALEXANDER ACOSTA,
SECRETARY OF LABOR,
his official capacity, *et al.*,

Defendants.

CIV-17-009-R

JOINT PROPOSAL FOR SUMMARY JUDGMENT BRIEFING SCHEDULE

The parties, by and through their undersigned counsel, respectfully propose that they submit a suggested summary judgment briefing schedule on July 12, 2017.¹ In support of that proposal, the parties state as follows:

This case involves several facial challenges to the Recordkeeping Modernization Rule (“the Rule”), which was promulgated by the Occupational Safety and Health Administration (“OSHA”) in May 2016. *See* Improve Tracking of Workplace Injuries and Illnesses, 81 Fed. Reg. 29,624 (May 12, 2016), *as revised at* 81 Fed. Reg. 31,854 (May 20, 2016). Plaintiffs filed their Complaint on January 4, 2017, *see* ECF No. 1, and on March

¹ Although none of the prospective intervenors is currently a party in this case, counsel for Defendants conferred with counsel for both sets of prospective intervenors about this proposal. The Unions do not object to the proposal and the Public Health Intervenors take no position.

10, 2017, the parties requested to jointly file a proposed summary judgment briefing schedule, *see* ECF No. 37. As explained in their March 10 submission, the parties believe that this case—which raises questions of statutory and constitutional law—is best resolved on cross-motions for summary judgment based on the record compiled by OSHA in promulgating the Rule. *See* ECF No. 37. The Court granted the parties’ March 10 request, *see* ECF No. 38, but it subsequently stayed the deadline for submitting a proposed summary judgment briefing schedule until June 9, 2017, *see* ECF No. 60. The Court did so after Defendants explained that issuing a 60-day stay would give incoming leadership personnel at the United States Department of Labor time to consider the issues raised in this case. *See* ECF No. 49.

During the period of the 60-day stay, R. Alexander Acosta was confirmed as Secretary of Labor, taking office on April 28, 2017. Subsequently, on May 17, 2017, OSHA announced that it “intends to propose” a rule that would extend the July 1, 2017 deadline for certain employers to submit the first batch of information required under the Rule. *OSHA Injury and Illness Recordkeeping and Reporting Requirements*, Occupational Safety and Health Administration, <https://www.osha.gov/recordkeeping/index.html> (last visited June 9, 2017). Given this development, and the fact that the administration is still considering whether to go through rulemaking to make additional changes to the Rule, the parties respectfully request that they submit a proposed summary judgment briefing schedule on **July 12, 2017**. This proposal will conserve judicial resources by allowing the parties to suggest a briefing schedule that takes into account rulemaking that could impact—and potentially change—parts of the Rule.

Dated: June 9, 2017

/s/ Nathan L. Whatley

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(signed by filing attorney with permission)
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Counsel for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 9, 2017, a true, correct, and exact copy of the foregoing document was served via electronic notice by the CM/ECF filing system to all parties on their list of parties to be served in effect this date.

/s/ Michael H. Baer
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